IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 10.12.2007

CORAM

THE HONOURABLE MR. JUSTICE S.J.MUKHOPADHAYA
AND
THE HONOURABLE MR. JUSTICE N.PAUL VASANTHAKUMAR

W.P. NO. 14554 OF 1988
AND
W.M.P. NO. 21768 OF 1998

K.V.Ananthakrushnan .. Petitioner

- Vs -

1. The Registrar
   High Court
   Madras 104.

2. The Chairman
   Rules Committee
   High Court
   Madras 104

3. Union of India, rep. by
   the Law Secretary
   Central Secretariat
   New Delhi 110 001.

4. The State of Tamil Nadu
   rep. by the Law Secretary
   Fort St. George
   Chennai.
   (RR-3 & 4 impleaded as per order
   of Court dated 5th Sept., 2001 in
   W.M.P. No.28850 of 1998) .. Respondents

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Writ Petition filed for the issuance of a writ of declaration to declare that the Letters Patent dated 28.12.1865 issued in Act 24 and 25 of Victoria Chapter 104 containing 45 clauses forming part of the Rules of the High Court, Madras (Original Side) as null and void and for appropriate orders.

For Appellant : Mr. K.S.Gnansambandam

For Respondents: Mr. P.Wilson, Asst. Solicitor General
for R-3
Mr. K.Balasubramaniam Spl.GP., for RR-1 & 4
Ms.Rita Chandrasekar for R-2

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ORDER

S.J.MUKHOPADHAYA, J.

The writ petition was preferred by petitioner for a declaration that the Letter Patent dated 28th Dec., 1865, issued under Acts 24 and 25 of Victoria Chapter 104 containing 45 clauses forming part of the Rules of the High Court, Madras (Original Side) as null and void and for appropriate orders.

2. Before discussing the stand taken by the petitioner, it is pertinent to note that by the amended Letters Patent dated 28th Dec., 1865, the High Court of Judicature at Madras was established, as evident from the preamble to the Letters Patent in question and quoted below and, thereby, the petitioner has practically challenged the establishment of the High Court before the same High Court :-

> "For the High Court of Judicature for the Presidency of Madras
> (28th December, 1865)
>
> Recitals of Acts 24 and 25 vic. C 104 – Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith. To all to whom these presents hall come, greeting: Whereas by an Act of Parliament passed in the twenty-fourth and twenty-fifth years of Our Reign entitled "An Act for establishing High Courts of Judicature in India", it was, amongst other things, enacted that it should be lawful for Her Majesty by Letters Patent under the Great Seal of the United Kingdom, to erect and establish, a High Court of Judicature at Madras, for the Presidency of Madras aforesaid, and that such High Court should consit of a Chief Justice and as many Judges, not exceeding 15, as Her Majesty might, from time to time, think fit to appoint, who should be selected from among persons qualified as in the said Act is declared: Provided always that he persons who at the time of the establishment of such High Court were Judges of the Supreme Court of Judicature and permanent Judges of the Court of Sudder Dewany Adawlut or Sudder Adawlut, of the same Presidency, should be and become Judges of such High Court without further appointment for that purpose, and the Chief Justice of such Supreme Court should become the Chief Justice of such High Court and that upon the establishment Sudder Dewany Adawlut and Faujidarry Adawlut at Madras in the said Presidency should be abolished:
>
> And that the High Court of Judicature so to be established should have and exercise all such Civil, Criminal, Admiralty, and Vice-Admiralty, Testamentary, Intestate and Matrimonial Jurisdiction, original and appellate, and all such powers and authority for and in relation to, the administration of Justice in the said Presidency of Her Majesty might, by such Letters Patent as aforesaid grant and direct, subject, however, to such

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directions and limitations as to the exercise of original, civil and criminal jurisdiction beyond the limits of the Presidency Town, as might be prescribed thereby: and save as by such Letters Patent, might be otherwise directed and subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor-General of India in Council, the High Court so to be established should have and exercise all jurisdiction, and every power and authority whatsoever, in any manner vested in any of the Courts in the same Presidency abolished under the said Act at he time of the abolition of such last mentioned Courts:

And whereas We did, upon full consideration of the premises, think fit to erect and establish, and by Our Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland bearing date at Westminster the Twenty-sixth day of June, in the Twenty-fifth Year of Our Reign, in the year of Our Lord, one thousand eight hundred and sixty-two did accordingly for Us, Our heirs and successors, erect and establish at Madras, for the Presidency of Madras, aforesaid, a High Court of Judicature which should be called the High Court of Judicature at Madras, and did thereby constitute the said Court to be a Court of Record; and whereas We did thereby appoint and ordain, that he said High Court of Judicature at Madras should, until further or other provision should be made by Us, or Our heirs and successors in that behalf, in accordance with the recited Act, consist of a Chief Justice and five Judges, and did thereby constitute and appoint certain persons, being respectively qualified as in the said Act is declared to be Judges of the said High Court.

And whereas by the said recited Act it is declared lawful for Her Majesty at any time within three years after the establishment of the said High Court, by Her Letters Patent, to revoke all or such parts or provisions as Her Majesty might think fit of the Letters Patent by which such Court was established and to grant and make such other powers and provisions as Her Majesty might think fit, and as might have been granted or made by such first Letters Patent;

And whereas by the Act of the Twenty-eighth year of Our Reign, chapter fifteen, entitled "an Act to extend the term for granting fresh Letters Patent for the High Courts in India, and to make further provision respecting the territorial jurisdiction of the said Courts," the time for issuing fresh Letters Patent has been extended to the first of January one thousand eight hundred and sixty-six:

And whereas, in order to make further provisions respecting the Constitution of the said High Court, and the administration of Justice thereby it is expedient that the said Letters Patent, dated the twenty-sixth of June, one thousand eight hundred and sixty-two, should be revoked,

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and that some of the powers and provisions thereby granted and made should be granted and made with amendments and additional powers and provisions by fresh Letters Patent:”

3. Learned counsel for the petitioner referred to the history of establishment of courts in India, cited a number of books and made submissions, as referred hereunder :-

Queen Elizabeth granted a Charter in 1600 incorporating the London East India Company. William III granted a Charter in 1698 to establish English East India Company. Both Companies were amalgamated and came to be knows as English East India Company. This Company carried their Trade and Business in the East Indies, including India. Slowly the East India Company started acquiring territories and administering the natives. As a part and parcel of Administration, the East India Company established Courts of law in different places of their occupation after obtaining permission from the Crown. Even the Governor and Board of Directors of the East India Company sitting at England used to issue Charters to the 'Factor' who was the Head of the Factory, to Administer Justice to their employees and even to the natives. The occupation of the Indian territory by the East India Company expanded day by day. The persons of the East India Company lived a lavish life. This raised the eyebrows of many of the Englishmen.

As the East India Company strengthened its hold on the native Indians, they indulges in malpractice and bad administration and this was complained to the British Government by many persons. In 1857 there was a Sippoy Mutiny revolting against the English rule and in 1858 the Queen issued a proclamation and the British Parliament passed the Government of India Act, 1858. Consequently, the East India Company and its affairs were taken over by the British Government. To alleviate the corrupt practice crept in the judicial system, the British Government wanted to establish a Judicial institution for rendering better justice. Toward this goal, the British Parliament passed 'Indian High Courts Act, 1861' and in the same year 'Indian Councils Act' was also passed. This Act empowered the Queen to establish High Court of Judicature at Fort William in Bengal for the Bengal Division of the Presidency of Fort William and by like Letters Patent to erect and establish like High Courts at Madras and Bombay for those presidencies respectively. The Indian High Courts Act inter alia provided for the strength, qualification and service condition of the Judges and the power and their jurisdiction. Under this Act, by virtue of Section 8, the Supreme Courts in the Presidency of Fort William in Bengal (Calcutta), the Presidency of Madras and the Presidency of Bombay and the Appellate Courts of Sudder Diwani Adawlut and the Foujdary Adalut in all the three presidencies were abolished and jurisdiction exercised by the Supreme Courts and the Courts of Sudder Diwani Adawlut and Foujdary were vested in the High Courts.

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By virtue of the power granted to the Queen under the Indian High Courts Act, 1861, the Queen issued the 'Letters Patent, 1862' for the High Court of Judicature for the Presidency of Madras on the 26th June, 1862. The Letters Patent had a life time of three years and in 1865 the Queen issued an Amended Letters Patent which came into force on 28.12.1865. This Letters Patent continues to be the basis for the administration of the High Court and forms part and parcel of the High Court Rules. As the Letters Patent 1862 and 1865 were issued as authorised by the 'Indian High Courts Act, 1861', the Letters Patent is only a permissive or subordinate legislation, if at all called to be a law.

By virtue of the Indian Councils Act, 1861, the Dominion Council and the Provincial Councils were given power to legislate on the subject allotted to them as per the Indian Councils Act and the subsequent legislature. The Dominon Councils as well as the provincial councils were enacting laws in their spheres without any restriction or intervention by the British authorities. As full liberty was given to the Dominion Council and to the provincial councils, the provisions of the Colonial Laws Validity Act, 1865, was not made applicable to the British Territories in India. The subject matter for which law could be made by the Dominion Council and the provincial councils were demarcated in the Devolution Rules framed under the Government of India Act. Only the Provincial Council was given power to legislate with regard to law Courts and their affairs.

The Government of India Act, 1915, was a consolidating Act and it repealed the Indian Councils Act, 1861, and the 'Indian High Courts Act, 1861'. Part-IX of Government of India Act, 1915, deals with the affairs of the Indian High Courts. As per the Government of India Act, 1915, the Letters Patent, 1862 and 1865 issued under the Indian High Courts Act, 1861, are also deemed to be repealed. The Government of India Act, 1915, in Part-IX absorbed all the High Courts established in British India by Letters Patent which includes the High Court of Judicature at Madras also. Therefore, it is to be deemed that the provisions of the Letters Patent, 1865 were repealed and substituted by Part-IX of the Government of India Acts, 1916, 1919 and 1935. Chapter-II of Part-IX of the Government of India Act, 1935, provides for the administration and powers of the High Court. After this the Indian Provisional Constitutional Second Amendment Order and the Indian Independence Act were passed in 1947. In 1947 the Governor General in Council issued orders establishing High Courts in different places which are continuing High Courts. All these enactments have now been consolidated and repealed by the provisions of the Constitution of India which came into force on 26.1.1950. Chapter-V of Part-VI of the Constitution of India deals with administration and powers of the High Courts. Articles 214 to 231 deals with the High Courts. Therefore, all the previous enactments dealing with the establishment, administration and affairs of the High Court are deemed to be repealed by Articles 214 to 231 of the Constitution of India.

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Thereby, the Letters Patent also is deemed to be repealed. The Letters Patent, 1865, deemed to have come to a close as early as the Government of India Act, 1915, came into force while repealing the Indian High Courts Act, 1861.

Apart from the High Courts established by Letters Patent, some of the High Courts were established by orders issued by the Governor-General in Council. Some High Courts were established after coming into force of the Constitution of India. Some Permanent Benches of the Main High Courts were established by the Presidential Ordinance. Some of the new High Courts were established under the State Reorganisation Act. The High Courts now in existence and the permanent Benches in various places in India is given in detail in Appendix-1.

4. The following submission has also been made by the learned counsel for the petitioner, while challenging the Letters Patent in question :-

i) The Letters Patent, 1865, is ultra vires the Constitution of India.

ii) As Indian High Courts Act, 1861, was repealed by the subsequent enactment, the Letters Patent, 1865, is also deemed to be repealed and no more alive for enforcement.

Iii) As the subject matters provided under the Letters Patent, 1865, are repealed by various subsequent Dominon, Provincial, Central and State enactments and Rules made by the authorities and the High Court, the provisions of the Letters Patent, 1865, have become obsolete and redundant. The Indian High Courts Act, 1861, was passed only to neck out the East India Company and to acquire the power and administration over the British possession in India. The Indian High Courts Act was one of such measures and incidental to the British Feudalism.

5. Certain other submissions were also made by the learned counsel for the petitioner and they have also been put on record by filing written submission, as detailed below :-

The Preamble of the Letters Patent, 1865, is running riot to the preamble of the Constitution of India. India having become a Sovereign Democratic Republic cannot have a law in the name of a foreign head of the Executive or a Sovereign. Her Majesty of England is no more the Chief Executive or the Ruler of India and the Preamble to the Letters Patent, 1865, is deemed to have become obscure.

The terms such as “We”, “Our”, “Us”, “Our heirs and successors”, etc., used in the Letters Patent, 1865, would denote only the British Crown and her successors and her subjects. As the Queen is not the Ruler of India and the Government of India cannot be considered to be a successor to the Crown, therefore, these terms have no relevance at all.

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The terms used in the Letters Patent such as "Our, special, grace, appoint and Ordain, etc., would show the command of the Queen and the subject in the receiving end. Therefore, the Queen by her grace had issued the Letters Patent which again is a symbol of the British hegemony. In short, the Preamble of the Letters Patent, 1865, in two paragraphs is the dictate of a Monarch and it is no more relevant or valid to India.

The Letters Patent, 1865, established the High Court at Madras for the Presidency of Madras. The Madras Presidency consisted of Andhra Pradesh, Kerala, Karnataka and Madras. After the State Reorganisation Act, the Presidency of Madras has become bifurcated into State of Andhra Pradesh, State of Karnataka, State of Kerala and State of Tamil Nadu. The other States have got their respective High Courts established after Reorganisation. So the "Madras Presidency at Madras" used in the Letters Patent has no relevance.

The Indian Councils Act, 1861, gave powers to the Dominion Council and the Provincial Councils to pas laws in respect of the subject matters allotted to them. Likewise, the subsequent enactments such as Government of India Act, 1915, 1919 and 1935 and the Provincial Constitutional Order, 1947, and the Constitution of India, 1950, have given powers to the Dominion Council and the Provincial Councils and after coming into force of the Constitution of India, 1950, to the State Legislatures and the Parliament of India to pass laws as provided under the Legislative list and Devolution Rules as such many laws had been passed repealing the provisions of the Indian High Courts Act, 1861, and the Letters Patent, 1865 and such repeals are mentioned in Appendix-2. Therefore, the provisions of the Letters Patent, 1865, have become redundant and no more in force.

Even while the Indian Councils Act, 1861, came into force the phrase "British India" was amended to "India". Subsequently, the short-title Act, 1897 provided that the British India Acts would be known as "Indian Act". After coming into force of the Indian Independence Act, 1947, no more Indian continued to be a dominion of the British Government. After becoming a Sovereign Democratic Republic and giving a Constitution to ourselves neither the British Government nor His Majesty or Her Majesty or the terms "British India" or "Dominion" have got any relevance in the sphere of any activities of the Indian government either executive or legislative or judicial. Therefore, the Letters Patent, 1865, which continues in the name of the Queen has no relevance whatsoever. The long stay of the Letters Patent, 1865, is not an excuse to validate it as it lost its force and applicability soon after coming into force of the Government of India Act, 1915, which repealed the Indian High Courts Act, 1861, and by subsequent repealing enactments.

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Article 372 of the Constitution of India is only a transitional provision. Reading the sub-clause 3 along with the main Article it emerges that a law to be adapted had to be promulgated by the President of India within a period of two years from the date of commencement of the Constitution. But the Letters Patent, 1865, was not included in the adapted laws promulgated by the President of India. Under Section 3 (29) of the General Clauses Act, 1897, the Law of India is not included the laws made by the British Government. The letters Patent, 1865 being an instrument handed down by the English Queen, who is the head of the British Government, it is not an Indian Law and it has no force whatsoever. Under Article 366 (10) of the Constitution of India the "Letters Patent" is not included in the list of existing law. The terms Law, Ordinance, Order, Bye-law, Rule or Regulation do not cover Letters Patent because the Letters Patent was issued by the Crown under an Act enabling of the English Parliament. Issuing a 'Letters Patent' is a peculiar power given to the Crown. Therefore, the Letters Patent cannot be construed as an existing law. Article 367 (3) defines that for the purpose of this constitution "foreign state" means any state other than India. As such "Her Majesty" who had handed over the "Letters Patent" is a person of a foreign state in whose name no law can continue in India. Article 395 repeals the Government of India Act, 1935 and the Indian Independence Act, 1947, and the Constitution of India is final. The Schedule VII of the Constitution of India provides for the legislation by both the Legislature and the Parliament to make laws with regard to the establishment and administration and other affairs of the High Court and as such all the High Courts in India are to be construed as "High Court" under Article 224 of the Constitution of India.

Under the Constitution there is no categorisation of the High Courts such as formed under the Charter, Letters Patent, Governor General's Order, by the Act of Parliament or Legislature or a Presidential Ordinance. All the High Courts are of equal status and all the judges of the High Court also enjoy equal status. Majority of the High Courts are functioning under the Rules framed by the Rules Committee or by the respective Legislature. The High Courts created under a Charter or a Letters Patent are not accorded any special status nor they do have any special significance. As such all the High Courts are deemed to be the High Courts as defined under the Constitution, it is not desirable to have the Letters Patent o some High Courts and Rules made by the High Court or the State Legislature to the other High Courts. To be in consonance with the provisions of the Constitution and to fall in line with other High Courts the Letters Patent in the name of the British Crown has to be declared null and void as it runs counter to the preamble and philosophy of the Constitution of India. The Letters Patent, 1865, also stands repealed by various enactments passed prior to the constitution, after the constitution and the rules made by the High Court for its Original and Appellate sides.

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The Constitution of India is the supreme document and all other statutes rules and regulations whatsoever should be subject to the provisions of the constitution. Therefore, the preamble of the Constitution cannot be equated to the preamble of the other statutes. The preamble of the Constitution proclaims the purpose and philosophy of the Constitution. The philosophy of the Constitution is that India is a Sovereign Democratic Republic. In a sovereign republic no law can continue in the name of the foreign sovereign or a foreign authority. Otherwise it will tantamount to saying that the Queen is still competent to amend or alter the Letters Patent and the other bodies have not gained the exclusive and absolute power to amend or alter the rules of the High Court. The Letters Patent cannot be a perpetual law after the transfer of power by the British and India becoming a republic.

As on the date of coming into force of the Constitution under Article 372 erstwhile Acts and Laws had to be adapted within two years period. Letters Patent was not adopted within the said period. This may even be construed as a deliberate omission by the authority concerned.

The Imperial Acts became Indian Acts by "Indian Act Adaptation Law, 1951" and the Letters Patent is not altered either in the preamble or in its contents. After the Adaptation Law, 1951, the preamble and the Letters Patent automatically gets extinguished.

Schedule VII of the Constitution of India provides for the laws to be made with regard to the High Courts and other courts both by the Parliament and the State Legislatures. In List-I, Entries-77, 78, 79 and 95 and in List-II, Entries-3 and 65 and in List-III, Entries-1A and 46 provide for the law making by the Parliament and Legislatures. Whileso, there is no reason or necessity for the continuation of the Letters Patent. As early as the Government of India Act, 1915, came into force the Letters Patent became a dead wood.

As the Parliament and the State Legislatures have failed to remove the Letters Patent, 1865, it is only the High Court, which is competent to declare the Letters Patent, 1865, as invalid. It is a benign command of the Constitution of India that all courts should interpret the laws in consonance with the provisions, philosophy and spirit of the Constitution.

6. The 3rd respondent, Union of India, in its affidavit, while denied the submission, referred to Article 225 of the Constitution of India, which provides that the jurisdiction and law administered in any existing High Court shall be the same as immediately before preceding the commencement of the Constitution of India. According to the 3rd respondent, Letters Patent, being a law in force in the territory of India immediately before the commencement of the Constitution, will continue to be in force and operative except to the extent that any provision is inconsistent with any part of the Constitution as per Article 13 of the Constitution.

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7. The 2nd respondent has given the background history of the establishment of this Court vide Acts 24 and 25 of Victoria Chapter 104 of Letters Patent, dated 28th Dec., 1865. According to the 2nd respondent, many clauses of the amended Letters Patent Acts 24 and 25 of Victoria Chapter 104 have become redundant.

8. According to the 1st respondent, the petitioner has overlooked Article 372 of the Constitution of India and the assumption made that the laws enacted by the erstwhile Parliament Act of England or King in Council stood dead and appears to have proceeded on hypothetical political philosophies carried away by assumed sentiments rather than on sound reason of law. A law which has been continued and is used for day-to-day administration of justice in the State by the High Court cannot be doubted as dead law and the contentions are contrary, having no substance or merit. The 1st respondent has also given the history of establishment of the High Court of Judicature at Madras, which was originally made vide Acts 24 and 25 of Victoria Chapter 104 dated 25th June, 1862 amended vide 28th Dec., 1865 by abolishing the Supreme Court and the Courts of Sudder Adaulut and Farjdarry Adawlut at Madras.

According to the 1st respondent, the original side rule of the High Court or the history of Acts 24 and 25 of Victoria Chapter 104 dated 28th Dec., 1865, contain 45 clauses. As per Letters Patent, the High Court of Judicature at Madras is a court of record. There were only three Chartered High Courts established in India, namely, Calcutta, Bombay and Madras during the British reign, which have been continued to be as such in the respective places. Those Chartered High Court exercised different powers apart from exercising power provided under the Presidential Towns. They have been empowered by Letters Patent to exercise jurisdiction under Admiralty matters, testamentary and intestate, matrimonial cases, original side, etc. It was submitted that in Andhra Coffee & Flour Mills – Vs – Brooke Bond India Ltd. reported in 1995 (2) MLJ 663 :: 1995 TLNJ 263, it has been held that Letters Patent was all along considered as law, but its application was limited only to the three Chartered High Courts in India. The 1st respondent has also taken plea that many of the clauses of the Letters Patent in question have become obsolete.

9. We have noticed that this Court was established vide Acts 24 and 25 of Victoria Chapter 104 dated 28th Dec., 1865. The High Court assumes itself a creature under the said Act, it is not desirable for this Court nor this Court is competent to declare its original establishment and constitution as illegal. Further, though it is open to any person to challenge the jurisdiction of a court of law, but such person cannot challenge the constitution of the Court before the same Court, though it may be challenged before a higher Court, if so permissible.

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10. Article 225 of the Constitution deals with the High Courts, which were existing at the time of enacting the Constitution of India, which allowed the existing High Court to continue with respective powers as were exercising immediately before the commencement of the Constitution. The said provision is quoted hereunder :-

> "225. Jurisdiction of existing High Courts. - Subject to the provisions of the Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of the Constitution:
>
> [Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts in respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction.]"

The existing laws and their adaptation were also allowed to be continued under Article 372 of the Constitution of India. Clause (1) of Article 372 reads as follows :-

> "372. Continuance in force of existing laws and their adaptation.-
>
> (1) Notwithstanding the repeal by this Constitution of the enactments referred to in article 395 but subject to the other provisions of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent legislature or other competent authority."

In the case of Ameena, AIR 1992 Bombay 214, the Bombay High Court held that the expression "all the law in force" includes not only enactment of the Indian Legislative, but also the common law of the land, which was being administered by Courts in India. The same includes not only personal law, but also the rules of the English Common Law, such as Rules of Interpretation of Statutes, etc.

10. So far as different clauses are concerned, we heard the parties, including learned counsel for the respondents. We also enquired into the mater from other records of the High Court to find out the clauses of Letters Patent, which are still in force and the clauses, which has become redundant. The following fact has been brought to the notice of the Court :-

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CLAUSE	STATUS
Clause – 1 – Revocation of Letters Patent, 1862	Having revoked and acted upon, it has become redundant
Clause – 2 – High Court at Madras to be continued	To continue under the Constitution
Clause – 3 – Judges of the said High Court to be continued	To continue under the Constitution
Clause – 4 – Clerks, etc., of the said High Court to be continued	Has become obsolete in view of Article 229 of the Constitution
Clause – 5 – Declaration to be made by Judges	Has become obsolete in view of Article 219 of the Constitution and Form VIII of 3rd Schedule to the Constitution
Clause – 6 - Seal	Has become obsolete in view of High Court Seals Act, 1950, whereby form and contents of the Seal of the High Court has changed
Clause – 7 – Writs, etc., to issue in name of the Crown, and under seal	As this clause is inconsistent with the provision of the Constitution, they are now issued in the name of the High Court itself under Article 226 of the Constitution of India
Clause – 8 – Appointment of Officers	Has become obsolete in view of Article 229 of the Constitution
Clause – 9 – Powers of High Court in admitting Advocates, Vakeels and Attorneys	The power has been taken away and is vested with the Bar Council by Advocates Act, 1961.
Clause – 10 – In making rules for the qualifications, etc., Advocates, Vakeels and Attorneys	The power has been taken away and is vested with the Bar Council by Advocates Act, 1961.
Clause – 11 – Local limits of the ordinary original jurisdiction of the High Court	To be administered in terms with the Constitution and the Civil Procedure Code
Clause – 12 – Original jurisdiction as to suits	To be administered in terms with the Constitution and the Civil Procedure Code

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Clause – 13 – Extraordinary original civil jurisdiction	To be administered in terms with the Constitution and the Civil Procedure Code
Clause – 14 – Joinder of several causes of action	To be administered in terms with the Constitution and the Civil Procedure Code
Clause – 15 – Appeal from the Courts of Original Jurisdiction to the High Court in appellate jurisdiction	A part of the provision has become obsolete in view of the amendment to the Civil Procedure Code by Amending Acts, 1976 and 2002 and insertion of Section 100-A
Clause – 16 – Appeal from Court in the Provinces	To be administered in terms with the Constitution and the Civil Procedure Code
Clause – 17 – Jurisdiction as to infants and lunatics	To be administered in terms with the Constitution and the Acts enacted by Parliament
Clause – 18 – Provision with respect to the Insolvent Court	To be administered in terms with the Constitution and Presidency Insolvency Act and Rules framed by the High Court
Clause – 19 – By the High Court in exercise of Ordinary Original Civil Jurisdiction	No equity jurisdiction conferred separately – no case can be filed only on the ground of equity – emphasis rules of natural justice
Clause – 20 – In the exercise of extraordinary original civil jurisdiction	No equity jurisdiction conferred separately – no case can be filed only on the ground of equity – emphasis rules of natural justice
Clause – 21 – By the High Court in the exercise of appellate jurisdiction	No equity jurisdiction conferred separately – no case can be filed only on the ground of equity – emphasis rules of natural justice
Clause – 22 – Ordinary Original Jurisdiction of the High Court	Have become obsolete in view of vesting of jurisdiction with City Civil Court in terms with Code of Criminal Procedure Amendment Act, Madras Act XXXIV of 1955

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Clause – 23 – Jurisdiction as to persons	Have become obsolete in view of vesting of jurisdiction with City Civil Court in terms with Code of Criminal Procedure Amendment Act, Madras Act XXXIV of 1955
Clause – 24 – Extraordinary Original Criminal Jurisdiction	Original Criminal Jurisdiction of the High Court had been abolished
Clause – 25 – No appeal from the High Court exercising Original Jurisdiction	Have become obsolete in view of vesting of jurisdiction with City Civil Court in terms with Code of Criminal Procedure Amendment Act, Madras Act XXXIV of 1955
Clause – 26 – High Court to review on certificate of Advocate-General	Have become obsolete in view of vesting of jurisdiction with City Civil Court in terms with Code of Criminal Procedure Amendment Act, Madras Act XXXIV of 1955
Clause – 27 – Appeal from Criminal Courts in the Provinces	To be administered in terms with the Code of Criminal Procedure
Clause – 28 – Hearing of referred cases and revision of criminal trials	To be administered in terms with the Code of Criminal Procedure
Clause – 29 – High Court may direct the transfer of a case from one Court to another	To be administered in terms with the Code of Criminal Procedure and also the inherent jurisdiction of the High Court
Clause – 30 – Offenders to be punished under Indian Penal Code	To be administered in terms with the Indian Penal Code as amended vide Criminal Law Amendment Act and other Acts
Clause – 31 – Judges may be authorised to sit in any place by way of circuit or special commission	To continue under the Constitution and the Madras High Court (Establishment of Permanent Bench at Madurai) Order, 2004
Clause – 32 - Civil	To continue as per the Constitution and the relevant laws
Clause – 33 - Criminal	To continue as per the Constitution and the relevant laws

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Clause – 34 – Testamentary and Intestate Jurisdiction	To continue as per the Constitution and the relevant laws
Clause – 35 – Matrimonial Jurisdiction	Has become obsolete in view of passing of the Family Courts Act and vesting the jurisdiction with the Family Court in matters arising under the Indian Divorce Act
Clause – 36 – Single Judges and Division Courts	To continue under the Madras High Court Rules
Clause – 37 – Regulation and Proceedings (Civil Procedure Code)	To Continue
Clause – 38 – Regulation of Proceedings (Criminal Procedure Code)	To Continue
Clause – 39 – Power to Appeal (Appeals to Privy Council)	Has become obsolete in view of abolition of Privy Council by Act V of 1949
Clause – 40 – Appeal from interlocutory judgments	Has become obsolete in view of abolition of Privy Council by Act V of 1949
Clause – 41 – Appeal in criminal cases, etc.	Has become obsolete in view of abolition of Privy Council by Act V of 1949
Clause – 42 – Rule as to transmission of copies of evidence and other documents	Has become obsolete in view of abolition of Privy Council by Act V of 1949
Clause – 43 – High Court to comply with requisition from Government for records	Have become redundant in view of Constitution and it is void
Clause – 44 – Powers of Indian Legislature preserved	Have become redundant in view of Constitution and it is void
Clause – 45 – Provisions of former Letters Patent inconsistent with these Letters Patent to be void	Only declaration

12. In view of the fact that most of the clauses of the Letters Patent have become obsolete and many of it has become void after promulgation of the Constitution, no further declaration is required to be made. Other clauses as shown to be continuing being not inconsistent with any provision of the Constitution, shall continue till amended or superseded by other law.

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13. There being no merit, this writ petition fails and it is accordingly dismissed. Consequently, connected miscellaneous petition is also dismissed. But there shall be no order as to costs.

GLN

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Registrar
   High Court, Madras 104.

2. The Chairman
   Rules Committee
   High Court, Madras 104

3. The Law Secretary
   Government of India
   Central Secretariat
   New Delhi 110 001.

4. The Law Secretary
   Government of Tamil Nadu
   Fort St. George, Chennai.

+1 cc to Mr.K.S.Gnanasambandan, Advocate Sr.No.72614.

+1 cc to The Government Pleader Sr.No.72878.

AKR(CO)
DCP/13.12

W.P. NO. 14554 OF 1988

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